

Department of Veterans Affairs

825.904

Regional Commissioner, U.S. Customs Service, 6 World Trade Center, New York, New York 10048

Regional Commissioner, U.S. Customs Service, 423 Canal St., New Orleans, Louisiana 70130

Regional Commissioner, U.S. Customs Service, 300 N. Los Angeles St., Los Angeles, California 90053

Regional Commissioner, U.S. Customs Service, 55 E. Monroe St., Chicago, Illinois 60603

Subpart 825.7—Restrictions on Certain Foreign Purchases

825.701 Policy.

825.703 Exceptions.

When felt to be in the best interest of the Government, the contracting officer may request exceptions to the requirements of FAR 25.7 for purchases in excess of \$10,000 from the Secretary through the Deputy Assistant Secretary for Acquisition and Materiel Management (93). Each such request must be fully justified, containing all pertinent facts.

Subpart 825.8—International Agreements and Coordination

825.870 Technical assistance

Contracting officers may obtain technical information or guidance on international agreements and treaties for procurements outside the United States by contacting the Director, VA Marketing Center.

Subpart 825.9—Omission of the Examination of Records Clause

825.902 Policy.

If the contracting officer determines that the "Examination of Records Clause" should be omitted after all reasonable efforts to include the clause have failed, and providing that omission of the clause is authorized in the instances cited in FAR 25.903, he/she may request, with appropriate documentation, a determination from the Secretary, through the Deputy Assistant Secretary for Acquisition and Materiel Management (93). The Secretary, should he/she concur in the contracting officer's determination that the clause should be omitted, will then forward an agency request for omission of the clause to the Comptroller General for a final determination as required by FAR 25-903(a)(1), or submit the report required by FAR 25.903(b).

[49 FR 12611, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

825.904 Determination and findings.

All determinations to omit the "Examination of Records Clause" will be supported by a determination and findings prepared by the contracting officer containing the information set forth in FAR 25.904. The completed determinations and findings will be made a part of the contract file. One copy of the determinations and findings will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 828—BONDS AND INSURANCE

Subpart 828.1—Bonds

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AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12612, Mar. 29, 1984, unless otherwise noted.

Subpart 828.1—Bonds

828.101 Bid guarantees.

828.101-3 Contract clause.

Where a bid bond is required for supplies or services, the phrase “any cost of acquiring the work” in paragraph (e) of the BID GUARANTEE clause in FAR 52.228-1 may be modified to refer to the cost of “supplies,” “services,” etc.

828.101-70 Safekeeping and return of bid guarantee.

(a) Certified checks or other negotiable security furnished as bid security with the three lowest acceptable bids will be retained in a safe. These will be returned by certified mail or in person upon presentation of proper receipt after contract and bonds have been signed and approved.

(b) Certified checks or other negotiable security furnished in support of

other than the three lowest acceptable bids should be returned promptly to the respective bidders by certified mail, or in person upon presentation of proper receipt.

(c) Commercial bid bonds are not returned unless specifically requested by the bidders, and, even if requested by any of the three low bidders, are not returned until contract and bonds have been executed by the successful bidder, or all bids have been rejected.

828.106-6 Furnishing information.

The head of the contracting activity as defined in 802.100 shall be the agency designee referenced in FAR 28.106-6(c) to furnish copies of payment bonds to requestors except for contracts awarded by the Office of Facilities. For those contracts, Office of Facilities contracting officers shall be the Department designee.

[54 FR 30045, July 18, 1989]

Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.

(a) Term contracts, or contracts of a continuing nature, for ambulance, automobile and aircraft service, will contain the provision in 852.237-71.

(b) *Exceptions.* The provisions of this 828.306 do not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, part II, chapter 3; or other emergency or sporadic vehicle or aircraft services. *Provided,* That such service is not used solely for the purpose of avoiding entering into a continuing contract. *Provided further,* That such services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

Subpart 828.70—Performance and Payment Bonds

828.7000 Bond premium adjustment.

When performance and payment bonds are required, the contract will contain the clause prescribed in 852.228-70.

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts

828.7100 Scope of subpart.

(a) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts which involve a risk of an unusually hazardous nature, covering medical research or development as authorized by 38 U.S.C. 4101.

(b) The authority to indemnify the contractor under this subpart does not create any rights to third parties which would not otherwise exist by law.

(c) As used in this subpart the term "contractor" includes subcontractors of any tier under a contract containing an indemnification provision pursuant to 38 U.S.C. 4101(c)(3)(A).

828.7101 General.

(a) The approval for the indemnification of contractors will be made by the Secretary of Veterans Affairs.

(b) Contracting Officers shall submit requests for approval, together with all available information, to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) for transmittal to the Secretary.

[49 FR 12612, Mar. 29, 1984, as amended at 54 FR 24173, June 6, 1989; 54 FR 30044, July 18, 1989]

828.7102 Extent of indemnification.

(a) Any contract for medical research or development authorized by 38 U.S.C. 4101, the performance of which involves a risk of an unusually hazardous nature, may provide that the Government will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not covered by the financial protection required under 828.7103.

(1) Liability (including reasonable expenses of litigation or settlement) to third persons, except liability under State or Federal Workmen's Compensation Acts to employees of the contractor employed at the site of and in connection with the contract for

which indemnification is granted, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract that provides for indemnification in accordance with this subpart will also provide for:

(1) Notice to the contracting officer of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

(2) Control of or assistance in the defense by the Government, at its election, of such suit or claim for which indemnification is provided in the contract.

828.7103 Financial protection.

(a) The financial protection to cover liability to third persons and loss of or damage to the contractor's property which the contractor is required to have and maintain shall be the maximum amount of insurance available from private sources; however, the Secretary may establish a lesser amount after taking into consideration the cost and terms of private insurance.

(b) The financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such forms to provide the maximum amount required. When the contractor elects to utilize self insurance, proof of such financial responsibility up to the maximum amount required will be furnished the contracting officer prior to award.

PART 829—TAXES

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829.000 Scope of part.

Subpart 829.1—General

829.101 Resolving tax problems.

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829.202 General exemptions.

829.202-70 Tax exemptions for alcohol products.

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829.000

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829.270–1 Institution responsibilities and procedures.

829.270–2 Processing of order by the Department of Veterans Affairs.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12614, Mar. 29, 1984, unless otherwise noted.

829.000 Scope of part.

This part prescribes policies and procedures for exemptions from Federal excise taxes imposed on tobacco and alcohol products for such items purchased for use in the Department of Veterans Affairs medical care program and specifies refund procedures for State and local taxes.

Subpart 829.1—General

829.101 Resolving tax problems.

Contracting officers will submit requests for legal advice through channels to the General Counsel.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.

829.202–70 Tax exemptions for alcohol products.

(a) *General.* (1) The procurement of spirits free of tax for nonbeverage purposes is permitted to Government agencies by regulations of the Bureau of Alcohol, Tobacco, and Firearms (ATF) (see 27 CFR 211.231–237, 213.141–146 and 240.720–722). The use of tax-free alcohol, whiskey, beer, wine and denatured spirits for nonbeverage purposes shall include but not be limited to medicinal and scientific purposes and in the treatment of patients.

(2) Authority is hereby delegated to the Director, Marketing Center, Hines, Illinois, and to the Chief, Acquisition and Materiel Management Service, Department of Veterans Affairs medical facilities to sign application permits on Bureau of Alcohol, Tobacco, and Firearms (ATF) prescribed forms. This authority is not to be redelegated.

(b) *Whiskey, alcohol, and denatured alcohol.* (1) Application forms for tax-free purchases are to be obtained from and submitted to the Director, Bureau of

Alcohol, Tobacco, and Firearms, Washington, DC 20226.

(2) ATF Form 1486, Specially Denatured Spirits for Use of United States, is the application/permit required for denatured spirits, and ATF Form 1444, Tax-Free Spirits for Use of United States, is required for distilled spirits (whiskey and alcohol). These are continuing permits to procure items tax free. Copies must be made available to the supplier in support of each procurement.

(3) Purchases for excise tax-free whiskey and alcohol, not available through the depot can only be made from a distillery or a bonded premises. In accordance with 27 CFR 213.144, the vendor will also support each shipment with ATF 1473, Shipment and Receipt Specifically Denatured Tax-Free, or Recovered Spirits. The ATF 1473 will be completed by the accountable officer and the original copy will be forwarded to the Regional Regulatory Administrator whose address is shown in item 12 of the form. A copy of ATF 1473 will be retained in the purchase order file.

(c) *Wine.* No tax exemption form or ATF permit is required for the tax-free procurement of wine. An extra copy of a properly executed purchase order or requisition document may be furnished to the supplier (retailer, wholesaler or winery) to facilitate record keeping.

(d) *Beer.* Tax-free beer may be procured only from licensed breweries and only when such product is prescribed for therapeutic use of patients. The application for an ATF permit is to be submitted in letter form to the Director, Bureau of Alcohol, Tobacco, and Firearms, Washington, DC 20226. The following information is required.

(1) Name and address of facility;

(2) Specific purpose for which beer will be used;

(3) Quantity proposed to buy each month, year, etc.;

(4) Name and address of brewery; and

(5) Copy of document authorizing contracting officer to sign request.

A new permit is needed only when beer is to be purchased from a different brewery than the one for which the original permit was requested.

[49 FR 12614, Mar. 29, 1984, as amended at 54 FR 24173, June 6, 1989]

829.270 Tax exempt tobacco products for State institutions.

(a) Bureau of Alcohol, Tobacco, and Firearms regulations permit the withdrawal of tax-free tobacco products by facilities and institutions owned or controlled by State Governments, territories, and the District of Columbia for gratuitous distribution to present and former members of the Armed Forces of the United States who are patients in such institutions (27 CFR 295.31-37). These arrangements will be effective only with institutions where the official-in-charge abides by the procedures and controls prescribed by the Department of Veterans Affairs. The unauthorized or illegal use of these products may result in the withdrawal of this privilege by the Department of Veterans Affairs.

(b) No tax exemption form or certificate is required for the tax-free purchase of tobacco products. An extra copy of the purchase order will be provided the manufacturer to facilitate record keeping required by the Bureau of Alcohol, Tobacco, and Firearms.

829.270-1 Institution responsibilities and procedures.

(a) The official-in-charge of the institution will act as a representative of the Department of Veterans Affairs in the purchase, storage, and distribution of these products and in ensuring the product is distributed on a gratuitous and equitable basis to all eligible recipients. Under no circumstances will these items be offered for sale.

(b) The Department of Veterans Affairs will neither accept nor handle donations or funds for institutions.

(c) Payment or nonpayment of State taxes on tobacco products is a matter between the concerned State and the ordering institution.

(d) Orders will be on the institution's regular order form made out to the manufacturer of the desired product. The original and two copies of the order, each signed, will be forwarded to the nearest Department of Veterans Affairs medical center. Orders shall also be issued to cover receipt of unsolicited shipments of these products intended for use of veteran-patients. All copies of these orders will be marked CONFIRMATION—DO NOT RESHIP.

All orders shall bear a certificate as follows:

Tobacco products for free distribution to present and former members of the Armed Forces of the United States who are hospitalized or domiciled in this institution.

(e) Copies of all orders and other pertinent documents will be retained and be available to the Department of Veterans Affairs and the Bureau of Alcohol, Tobacco, and Firearms for inspection purposes.

829.270-2 Processing of order by the Department of Veterans Affairs.

(a) Full cooperation will be given institution representatives in implementing these procedures.

(b) The facility director or designee will approve the institution order by signing the original and one copy in ink over his/her printed name and title. The approved original and copy shall be forwarded to the vendor as noted in 829.270. The additional copy shall be retained in the medical center's files.

[49 FR 12614, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40064, Sept. 29, 1989]

PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 831.70—Contract Cost Principles and Procedures

Sec.

831.7000 Scope of subpart.

831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.

831.7001-1 Tuition.

831.7001-2 Special services or courses.

831.7001-3 Books, supplies and equipment required to be personally owned.

831.7001-4 Medical services and hospital care.

831.7001-5 Secretary's Decision No. 557.

831.7001-6 Consumable instructional supplies.

831.7001-7 Reimbursement for other supplies and services.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12615, Mar. 29, 1984, unless otherwise noted.

Subpart 831.70—Contract Cost Principles and Procedures

831.7000 Scope of subpart.

This subpart contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost reimbursement type contracts pertaining to the furnishing of vocational rehabilitation, education, and training to eligible veterans under chapter 31 of Title 38, United States Code.

831.7001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.

831.7001-1 Tuition.

(a) Except as provided in this section, when the contractor has a customary cost of tuition the charge to the Department of Veterans Affairs may not exceed that charged to similarly circumstanced nonveteran students; provided that where the contractor has more than one standard charge for the same service, the charge to the Department of Veterans Affairs will be the lowest price for the entire course, semester, quarter, or term which is offered or published.

(b) VA will not normally pay tuition or incidental fees to institutions or establishments furnishing apprentice or other training on-the-job. VA may pay:

(1) For such charges customarily made by nonprofit workshop or similar establishment for providing work adjustment training to similarly circumstanced nonveterans even though an incentive wage is paid the trainee as part of the training; or

(2) For certain training expenses incurred by an employer providing on-the-job training following rehabilitation to the point of employability when such additional training is determined to be necessary by VA.

(c) When the total cost of instruction is paid from Federal funds or a portion of the cost is covered by grants from the Federal Government, i.e., Smith-Hughes or other laws, excluding Federal Land Grant Funds, such subsidy will be taken into consideration in determining the charge to the Department of Veterans Affairs.

The term, Federal Land Grant Funds, refers to those received under the Morrill-Nelson Act (Morrill Acts of 1862 and 1890 and the Nelson amendment of 1907) and section 22 of the Bankhead-Jones Act of 1935.

(d) Payments on behalf of a veteran who receives a fellowship, scholarship, grant-in-aid, assistantship, or similar award in complete or partial payment of tuition or fees or both will be made in accordance with the following:

(1) The award will reduce, to the extent of the award, the amount of tuition or fee or both that is payable by the Department of Veterans Affairs.

(2) Awards which are not paid in cash, except those which are made specifically for the purpose of defraying the cost of room and board in dormitories which will be disregarded, will reduce to the extent of the award the charges for which the Department of Veterans Affairs is responsible.

(3) Cash awards may be retained by the veterans and will not be deducted from charges ordinarily paid by the Department of Veterans Affairs.

(4) Waivers of tuition and fees provided under law by States or other Government authority will be utilized to reduce the charges payable by Department of Veterans Affairs in accordance with such waivers.

(e) Enrollment fees in an amount sufficient to cover the cost of registration may be paid, provided the institution or training establishment usually makes such a charge, and it does not exceed that charge made to other students or trainees.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

831.7001-2 Special services or courses.

Special services or courses are those services requested by the Department of Veterans Affairs which are over and above those customarily required by the institution for similarly circumstanced nonveterans and are considered by the contracting officer to be necessary for the rehabilitation of the trainee. The costs of such special services or courses will be negotiated prior to being requested by the Department of Veterans Affairs.

831.7001-3 Books, supplies and equipment required to be personally owned.

(a) Reimbursement for books, supplies, or equipment and referred to as supplies, will be made as provided in this section.

(1) Reimbursement will be made for those supplies customarily required to be owned personally by all students taking the same course or courses except that reimbursement may be made for items which are not specifically required by the school for pursuit of the course, but are determined to be needed by VA because of the demands of the course, general possession by other students, and the disadvantage imposed on the veterans by not having the item. In no instance will the supplies be in a greater variety, quality, or amount than required of nonveteran students. In this instance required is in contradistinction to requested or desirable to have or necessary for a future profession or job but not required by the institution of all students in the course.

(2) When supplies are available in several prices, grades, or qualities, reimbursement may be made only for such quality or grade that will meet the requirements.

(3) Partial payment agreements in which the Department of Veterans Affairs shares payment with the veterans is not allowable.

(4) The costs incurred by the institution in connection with the veteran's thesis such as typing, printing, microfilming, or otherwise reproducing the required number of copies; research expenses when certified by the veterans committee chairman, major professor, department head, or appropriate dean that such expenses are required in order to complete the course requiring the preparation of a thesis are considered as supplies and are authorized for reimbursement.

(5) When the institution operates a bookstore or supply store for all students the reimbursement for supplies issued to trainees will be no greater than charges made to nonveteran students.

(6) Where the institution, training establishment, or employer arranges for issuance of supplies to all students by stores or establishments not institu-

tionally owned and to pay such store or establishment for supplies issued to trainees, reimbursement is allowable provided the charges are no greater than those paid by nonveterans or to the institutions whichever is the lesser.

(7) Supplies purchased by the institution specifically for trainees will be reimbursed at the net cost to the institution.

(8) Where the institution does not provide or arrange for issuance of generally required books, tools and supplies for students attending the facility, the institution, in cooperation with VA, may designate certain stores and establishments to provide generally required books, tools and supplies for veterans pursuing a vocational rehabilitation program. The vendor will be reimbursed in the same manner as for supplies provided or arranged for by the institutions.

(9) Where it is customary in a survey subject to permit each student to obtain the aggregate of books for the subject on a rental basis (commonly referred to as a rental set) and the ownership or permanent possession by the student is not required, reimbursement is authorized for the rental charge provided it does not exceed the charge made to nonveteran students.

(10) Educational and training institutions furnishing supplies to trainees which are required to be owned personally or on a rental basis by all students pursuing the same or similar course may be compensated for such services in an amount not exceeding 10 percent of the allowable charge for the supplies furnished or rented except:

(i) Where the tuition covers the charges for supplies or rentals or a stipulated fee is assessed all students, handling charges are not allowable.

(ii) The handling charge is not allowable for Government-owned books procured by the institution from the Library of Congress.

(iii) In cases where an item of equipment will exceed \$50 in cost, effort will be made to secure a lower handling charge than for those costing a lesser amount. The agreed percent for such

handling charges will be included in the contract or added as an addendum.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

831.7001-4 Medical services and hospital care.

(a) The VA may pay the customary student health fee when payment of the fee is required for similarly circumstanced nonveterans. If payment of the fee is not required for similarly circumstanced nonveterans payment, payment may be made if it is determined by the Veterans Health Services and Research Administration that such payment is in the best interest of the veteran and the government.

(b) Where medical services or hospital care not covered by the customary students health fee are available in the school operated facilities or arrangements have been made by the institution with doctors and hospitals in the immediate area, reimbursement by the Veterans Benefits Administration for such services may be made in a contract for such services provided that the Director, VA Medical Center, determines:

(1) That such arrangements are necessary to provide timely medical care for veterans attending the facility under provisions of Chapter 31; and

(2) The general rates established for such services do not exceed the rates established by the Chief Medical Director.

(c) VA may reimburse a rehabilitation facility for incidental medical services provided during a veteran's program at the facility.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

831.7001-5 Secretary's Decision No. 557.

(a) Fees and expenses authorized under Secretary's Decision No. 557 may be authorized for payment when the educational institution or training establishment makes such payments on behalf of the veteran.

(b) Payment for fees and expenses not made by the educational institution or training establishment will be made in accordance with part 813 of this chapter or FAR 15-210(a)(1).

831.7001-6 Consumable instructional supplies.

(a) Reimbursement for consumable instructional supplies which institutions require for the instruction of all students, veteran or nonveteran pursuing the same or comparable course or courses will be made when:

(1) The supplies are entirely consumed in the fabrication of a required project.

(2) The supplies are not consumed but are of such a nature that they cannot be salvaged from the end product for reuse for further instructions by disassembling or dismantling the end product.

(b) Reimbursement for consumable instructional supplies is not allowable when:

(1) The supplies can be salvaged for reuse.

(2) The supplies used in a project which has been elected by the student as an alternate class project in order to produce an end product of greater value than that which is normally required to learn the skills of the occupation and which will become his property upon completion.

(3) The supplies used in a project which has been selected by the institution to provide the student with a more elaborate end product than is required to provide adequate instruction as an inducement to the veteran to elect a particular course of study.

(4) The salable value of the end product is equal to or greater than the cost of the supplies used in its fabrication or assembly and a reasonable use has not been made of such supplies so that they are not readily salvaged from the end product to be reused for instructional purposes.

(5) The end product is of permanent value and retained by the institution.

(6) A third party provides the articles or equipment for repair or improvement and for which he or she would otherwise pay a commercial price.

(7) The number of projects resulting in end products in excess of the numbers normally required to teach the recognized job operations and processes of the occupation stipulated in the approved course of study.

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(8) The cost of supplies are included in the charge for tuition or as a fee designated for such purpose.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

831.7001-7 Reimbursement for other supplies and services.

Reimbursement shall be made for other services and assistance which may be authorized under provisions of applicable Chapter 31 regulations including but not limited to employment and self-employment, initial and extended evaluation, and independent living services.

[49 FR 12615, Mar. 29, 1984, as amended at 54 FR 40064, Sept. 29, 1989]

PART 832—CONTRACT FINANCING

Subpart 832.4—Advance Payments

Sec.

832.402 General.

832.404 Exclusions.

Subpart 832.5—Progress Payments Based on Costs

832.502 Preaward matters.

832.502-2 Contract finance office clearance.

Subpart 832.8—Assignment of Claims

832.805 Procedure.

832.805-70 Distribution/notification of assignment of claims.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12616, Mar. 29, 1984, unless otherwise noted.

Subpart 832.4—Advance Payments

832.402 General.

The determination required by FAR 32.402(c)(1)(iii) will be made by the Deputy Assistant Secretary for Acquisition and Materiel Management. Prior to award, contracting officers will submit, through channels, the information required by FAR 32.409-1 for such determinations.

832.404 Exclusions.

(a) Under the provisions of 31 U.S.C. 3324(d)(2), as amended, advance payment is authorized for subscriptions or

other charges for newspapers, magazines, periodicals and other publications for official use of any office under the Government from appropriations available therefore, notwithstanding the provisions of 31 U.S.C. 3324(a). The term "other publications" includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual usage.

(b) Under the provisions of 31 U.S.C. 1535, advance payment may be made for services and supplies obtained from another Government agency. This includes items such as coupons from the Government Printing Office and Operator Permits, Civilian Defense Radio System, and from the Federal Communications Commission.

(c) Under the provisions of 5 U.S.C. 4109, advance payment may be made for all or any part of the necessary expenses for training Government employees in Government or non-Government facilities. This includes the purchase or rental of books, materials and supplies or services directly related to the training of a Government employee.

Subpart 832.5—Progress Payments Based on Costs

832.502 Preaward matters.

832.502-2 Contract finance office clearance.

Prior approval of actions listed in FAR 32.502-2 will be obtained from the Deputy Assistant Secretary for Acquisition and Materiel Management (93). Requests for approval shall be accompanied by full justification together with the recommendations of the contracting officer.

Subpart 832.8—Assignment of Claims

832.805 Procedure.

832.805-70 Distribution/notification of assignment of claims.

(a) The Contracting officer will file the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with

the General Accounting Office copy of the contract.

(b) Contracting officers will notify field facilities of any recognized assignment of payments under contracts executed in Central Office or by the Marketing Divisions in all cases where payment for articles and services under such contracts are certified and approved for payment in the field.

[49 FR 12616, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989]

PART 833—PROTESTS, DISPUTES, APPEALS

Subpart 833.1—Protests

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- 833.102 General.
- 833.103 Protests to the Department.
- 833.104 Protests to GAO.
- 833.105 Protests to the GSBGA.
- 833.106 Solicitation provision.

Subpart 833.2—Disputes and Appeals

- 833.209 Suspected fraudulent claims.
- 833.211 Contracting officer's decision.
- 833.212 Contracting officer's duties upon appeal.

AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

EDITORIAL NOTE: For nomenclature changes affecting part 833, see 52 FR 28559, July 31, 1987.

Subpart 833.1—Protests

833.102 General.

Solicitations shall instruct interested parties (see 852.233–2) to deliver a copy of any protest filed with the General Accounting Office (GAO) or the GSA Board of Contract Appeals (GSBCA) to the contracting officer and the appropriate Central Office activity as follows:

(a) For contracts to be awarded by the Office of Facilities Management: Chief Facilities Management Officer, Office of Facilities Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) For all other contracts: Deputy Assistant Secretary for Acquisition and Materiel Management (95B), Department of Veterans Affairs, 810 Ver-

mont Avenue, NW., Washington, DC 20420.

[51 FR 23070, June 25, 1986, as amended at 52 FR 28559, July 31, 1987; 54 FR 40065, Sept. 29, 1989; 58 FR 48974, Sept. 21, 1993; 61 FR 11586, Mar. 21, 1996]

833.103 Protests to the Department.

(a) *Filing of protests.* (1) An interested party may protest to the contracting officer, the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate.

(2) Protests must be in writing and addressed as follows:

(i) Contracting officer protests—address where offer/bid is to be submitted;

(ii) Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or

(iii) Chief Facilities Management Officer, Office of Facilities Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(3) The protester shall furnish a copy of the protest, including relevant documents not issued by the contracting agency, to the individual or location designated by the contracting agency in the solicitation for receipt of protests. If there is no designation in the solicitation, the protester shall furnish a copy of the protest to the contracting officer.

(4) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise, logically arranged and clearly state legally sufficient grounds of protest. An agency protest, however, may be dismissed for failure to comply with any of the requirements of this section.

(5) Protests regarding certain issues may be dismissed by VA without consideration of the merits or forwarded to another agency for appropriate action. Among these protests are the following:

(i) *Contract administration.* The administration of an existing contract is

within the discretion of the contracting agency. Disputes between a contractor and the Department are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978. 41 U.S.C. 601-613.

(ii) *Small business size standards and standard industrial classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration. 15 U.S.C. 637(b)(6); 13 CFR 121.3-6 (1984).

(iii) *Small business certificate of competency program.* Any referral made to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act, or any issuance of a certificate of competency or refusal to issue a certificate under such section is not reviewed in accordance with bid protest procedures absent a showing of possible fraud or bad faith on the part of Government officials.

(iv) *Protests under section 8(a) of the Small Business Act.* Since contracts are let under section 8(a) of the Small Business Act to the Small Business Administration at the contracting officer's discretion and on such terms as agreed upon by the procuring agency and the Small Business Administration, the decision to place or not to place a procurement under the 8(a) subcontract are not subject to review absent a showing of possible fraud or bad faith on the part of Government officials or that regulations may have been violated. 15 U.S.C. 637(a).

(v) *Affirmative determination of responsibility by the Contracting Officer.* Because a determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible to reasoned review, an affirmative determination of responsibility will not be reviewed, absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(vi) *Procurement protested to the General Services Administration Board of Contract Appeals.* Interested parties may protest a procurement or proposed

procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals. After a particular procurement or proposed procurement is protested to the Board, the procurement may not, while the protest is before the Board, be the subject of a protest to the contracting agency. An interested party who has filed a protest with the Board may not protest the same matter to the contracting agency. 40 U.S.C. 759(h), as amended by section 2713 of the Competition in Contracting Act of 1984, Pub. L. 98-369.

(vii) *Walsh-Healey Public Contract Act.* Challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act is for determination solely by the procuring agency, the Small Business Administration (if a small business is involved) and the Secretary of Labor. 41 U.S.C. 35-45.

(viii) *Subcontractor protests.* The contracting agency will not consider subcontractor protests except where the subcontract is by or for the Government.

(ix) *Judicial proceedings.* The contracting agency will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction.

(b) *Answering protests.* (1) On protests filed with the contracting officer, the contracting officer may make the determination identified in FAR 33.103(a). On protests filed with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, or the Chief Facilities Management Officer, Office of Facilities Management, those individuals are authorized to make the determination identified in FAR 33.103(a). These determinations made under (a) and (b) of this section will be in writing and will be made part of the contract file.

(2) The individuals identified in paragraph (c)(1) of this section will respond to any protests within 25 workdays after receipt of the protest. Preaward protests must be answered prior to contract award. Any delays in answering the protest will be communicated to all interested parties.

(c) *Letter to protester.* When a protest has been lodged with the contracting

officer and has been subsequently denied by the contracting officer, the letter to the protester along with copies to interested parties detailing the contracting officer's reasons for denying the protest will conclude with the following statement, naming the appropriate VA officials:

Should you disagree with this decision, you may file an appeal with¹_____. Any such appeal must be received within 14 calendar days after receipt of this letter. In the alternative, you may file an appeal with the General Accounting Office (GAO) at the following address: General Counsel, General Accounting Office, Washington, DC 20548, ATTN: Procurement Law Control Group. Any GAO appeal must be filed within 14 calendar of this formal notification of or actual or constructive knowledge of initial adverse agency action (as determined in 4 CFR 21.0(e)). It should be noted that if you file an appeal with the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer, Office of Facilities Management, you may waive your right of further appeal to the Comptroller General at a later date.

(d) *Requests for GAO advance decisions.* When a written protest has been lodged with the contracting officer and he/she considers it desirable to do so, he/she may request an advance decision from the Comptroller General. The submission to the Comptroller General will be sent through the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate, and will include the material indicated in FAR 33.104(a)(2). The contracting officer will notify the protesting individual or firm promptly in writing of the decision of the Comptroller General.

(e) *Protect after award.* When written protest is lodged with the contracting officer, he/she will review the basis for award.

¹The Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or (for contracts awarded by the Office of Facilities Management), Chief Facilities Management Officer, Office of Facilities Management, 811 Vermont Avenue, NW., Washington, DC 20420.

(1) If the contracting officer determines that the award was proper, he/she will furnish the protester a written explanation of the basis for the award which is responsive to the allegations of the protest. The contracting officer will advise the protester that he/she may appeal the determination to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, or the Chief Facilities Management Officer, Office of Facilities Management in the case of a Central Office architect-engineer or construction contract, or the Comptroller General as specified in paragraph (d) of this section.

(2) If the contracting officer determines that the award is questionable, he/she will advise the contractor of the protest and invite him/her to submit his/her views and relevant information. At the same time, the contracting officer may seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis or issue a stop-work order in accordance with contract clause, FAR 52.233–3, Protest After Award (July 1985). Whether or not the contractor agrees, the case will be submitted promptly to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, or the Chief Facilities Management Officer, Office of Facilities Management, in the case of a Central Office architect-engineer or construction contract, who will either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General for his/her decision.

[51 FR 23070, June 25, 1986, as amended at 52 FR 28560, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 40065, Sept. 29, 1989; 58 FR 48974, Sept. 21, 1993; 61 FR 11586, Mar. 21, 1996; 61 FR 20492, May 7, 1996]

833.104 Protests to GAO.

(a) *General.* (1) When a protest before or after award has been lodged with the General Accounting Office (GAO), the contracting officer will prepare a report to be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, or the Chief Facilities

Management Officer, Office of Facilities Management, as appropriate, within 5 workdays after receipt of verbal notice of the protest or receipt of a copy of the protest, whichever occurs first, for preparation of the Department report. The report should include a copy of the documentation indicated in FAR 33.104(a)(2).

(2) Contracting officers are responsible for the notification procedures outlined in FAR 33.104(a)(3).

(b) *Protests before award.* When the Department has received notice from the GAO of a preaward protest filed directly with GAO, award shall not be made until the matter is resolved, unless the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate, approves the head of contracting activity findings required by FAR 33.104(b)(1) and GAO has been notified pursuant to FAR 33.104(b)(2).

(c) *Protests after award.* Protests after award shall be handled in a manner consistent with procedures identified for protests before award. Although persons involved or affected by the filing of a protest may be limited, at least the contractor shall be furnished the notice of the protest and its basis by the contracting officer. When VA receives from GAO, *within ten calendar days after award*, a notice of protest filed directly with GAO, and it is determined by the head of the contracting activity pursuant to FAR 33.104(c)(2) that contract performance should be authorized, the written findings will first be approved by the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division (or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate), and the GAO must be notified as required by FAR 33.104(c)(3).

[51 FR 23070, June 25, 1986, as amended at 52 FR 28560, July 31, 1987; 54 FR 40065, Sept. 29, 1989; 58 FR 48974, Sept. 21, 1993; 61 FR 11586, Mar. 21, 1996]

833.105 Protests to the GSBGA.

(a) Contracting officers are required to forward appropriate documentation to prepare the Department's protest

file within 3 workdays after receipt of the notice of protest to the Deputy Assistant Secretary for Acquisition and Materiel Management (95B).

(b) Contracting officers are responsible for the notification procedures outlined in FAR 33.105(a)(2)(i). Confirmation of this notification process will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate, within three workdays after receipt of the protest in order to comply with FAR 33.105(a)(2)(ii).

[51 FR 23070, June 25, 1986, as amended at 52 FR 28559, July 31, 1987; 54 FR 40065, Sept. 29, 1989; 58 FR 48974, Sept. 21, 1993; 61 FR 11586, Mar. 21, 1996]

833.106 Solicitation provision.

The contracting officer shall insert the provision at 852.233-70, Protest Content, in solicitations other than small purchases.

[58 FR 48974, Sept. 21, 1993]

Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.

Matters relating to suspected fraudulent claims will be referred to the Assistant Inspector General, Office of Investigations (51) for investigation and referral to the Department of Justice. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General.

[51 FR 23070, June 25, 1986]

833.211 Contracting officer's decision.

(a) When a dispute cannot be settled by agreement and a final decision under the Disputes clause of the contract is necessary, the contracting officer shall furnish the contractor his/her final decision in the matter.

(b) The decision must be identified as a final decision, be in writing, and include a statement of facts in sufficient detail to enable the contractor to fully

understand the decision and the basis on which it was made. It will normally be in the form of a statement of the claim or other description of the dispute with necessary references to the pertinent contract provisions. It will set forth those facts relevant to the dispute, with which the contractor and the contracting officer are in agreement, and as clearly as possible, the area of disagreement.

(c) Except as provided in paragraph (d) of this section, the decision shall, in addition to the material required by FAR 33.211(a)(4), contain the following:

The Department of Veterans Affairs Board of Contract Appeals (VABCA) is the authorized representative of the Secretary for hearing and determining such disputes. The rules of the VABCA are published in section 1.783, of Title 38, Code of Federal Regulations. The address of the Board is 810 Vermont Avenue, NW., Washington, DC 20420.

[51 FR 23070, June 25, 1986, as amended at 52 FR 28561, July 31, 1987; 54 FR 40065, Sept. 29, 1989; 61 FR 20492, May 7, 1996]

833.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal in any form has been received by the contracting officer, that officer will endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days, will forward said original notice of appeal and a copy of the contracting officer's final decision letter to the Department of Veterans Affairs Board of Contract Appeals (VABCA). Copies of the notice of appeal and the final decision letter will be

transmitted concurrently to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division and the Assistant General Counsel (025). (In cases of construction contracts administered by the Office of Facilities Management, copies of appeal and final decision letter need not be transmitted to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division.)

(b) Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer will assemble and transmit to the VABCA, through the Office of General Counsel (025), an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the VABC; and

(5) Any additional information considered pertinent.

[51 FR 23070, June 25, 1986; 51 FR 44179, Dec. 8, 1986; 61 FR 11586, Mar. 21, 1996]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 836.2—Special Aspects of Contracting for Construction

Sec.

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AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12618, Mar. 29, 1984, unless otherwise noted.

EDITORIAL NOTE: For nomenclature change, see 52 FR 49017, Dec. 29, 1987.

Subpart 836.2—Special Aspects of Contracting for Construction

836.202 Specifications.

(a) The procedures described in part 810 shall be applicable to construction specifications.

(b) The use of "brand name or equal" or other restrictive specifications by

contract architect-engineers is specifically prohibited without the prior written approval of the contracting officer during the design stage. The contracting officer shall inform the prospective architect-engineers of this requirement during the negotiation phase, prior to award of contract for design.

(c) If it is determined that only one product will meet the Government's minimum needs and VA will not allow the submission of "equal" products, the bidders must be placed on notice that the "brand name or equal" provisions of the "Material and Workmanship" clause found at FAR 52.236.5 and any other provision which may authorize the submission of an "equal" product, will not apply. In order to properly alert bidders to this requirement, the clause found at 852.236-90, "Restriction on Submission and Use of Equal Products," shall be included in the solicitation.

[52 FR 282, Jan. 5, 1987, as amended at 53 FR 7756, Mar. 10, 1988; 53 FR 9631, Mar. 24, 1988; 54 FR 40065, Sept. 29, 1989; 61 FR 20492, May 7, 1996]

836.204 Disclosure of the magnitude of construction projects.

In lieu of the estimated price ranges described in FAR 36.204, the magnitude of VA projects should be identified in advance notices and solicitations in terms of one of the following price ranges:

- (a) Less than \$25,000;
- (b) Between \$25,000 and \$100,000;
- (c) Between \$100,000 and \$250,000;
- (d) Between \$250,000 and \$500,000;
- (e) Between \$500,000 and \$1,000,000;
- (f) Between \$1,000,000 and \$2,000,000;
- (g) Between \$2,000,000 and \$5,000,000;
- (h) Between \$5,000,000 and \$10,000,000;
- (i) Between \$10,000,000 and \$20,000,000;
- (j) Between \$20,000,000 and \$50,000,000;
- (k) Between \$50,000,000 and \$100,000,000;
- (l) More than \$100,000,000.

(This section has been promulgated as a deviation to the FAR as provided in FAR Subpart 1.4.)

[53 FR 1631, Jan. 21, 1988]

836.206 Liquidated damages.

Liquidated damage provisions may be included in construction contracts when the criteria of 812.202 is met. If partial performance may be accepted and utilized to the advantage of the Government, the clause substantially as set forth in 852.212-70 will be included in addition to the clause set forth in FAR 52.212-5.

836.208 Concurrent performance of firm fixed-price and other types of construction contracts.

When concurrent contracts of the type specified in FAR 36.208 are considered necessary or advantageous, prior approval will be requested of the Chief Medical Director for contracts involving Maintenance and Repair (M&R) funds or of the Chief Facilities Management Officer, Office of Facilities Management for contracts involving construction (major and minor) funds. Complete justification will be furnished in the request.

[49 FR 12618, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989; 61 FR 11586, Mar. 21, 1996]

836.209 Construction contracts with architect-engineer firms.

When it is considered necessary or advantageous to award a contract for construction of a project to a firm or person that designed the project, prior approval will be requested of the Chief Medical Director for contracts involving M&R funds or of the Chief Facilities Management Officer, Office of Facilities Management, for contracts involving construction funds. Complete justification will be furnished in the request.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 11586, Mar. 21, 1996]

836.211 Distribution of advance notices and solicitations.

Distribution of specifications and drawings on Central Office projects will be in accordance with that established by the Project Director.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 11586, Mar. 21, 1996; 61 FR 20492, May 7, 1996]

Subpart 836.3—Special Aspects of Sealed Bidding in Construction Contracting**836.371 Notice to proceed.**

(a) Construction contractors will be given a written "Notice to Proceed" with the work. A letter notice to proceed will normally be sent only after performance and payment bonds and the completed contract forms, where applicable, have been returned by the contractor and are accepted by the contracting officer. If the urgency of the work or other proper reason requires the contractor to begin work immediately, the award letter may include the "Notice to Proceed" with the reservation that payments are contingent upon receipt and approval of the required bonds.

(b) If the contract provides for liquidated damages, the notice to proceed will be sent by certified mail, return receipt requested. It will advise the contractor that the work will be completed within ____ (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office.

(c) If the contract does not provide for liquidated damages, certified mail is not required. Notices to proceed for these contracts will establish a date for completion taking into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, a copy will be furnished to the resident engineer or the Chief, Engineering Service. A copy of the notice to proceed will be filed with copy A of the contract. When certified mail is used, the certified mail receipt card returned by the post office will be attached to the copy of the notice to proceed. Copies of the notice to proceed will be filed with copies C and D of the contract after the date of receipt has been established and indicated thereon.

[49 FR 12618, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 61 FR 11587, Mar. 21, 1996; 61 FR 20492, May 7, 1996]

Subpart 836.5—Contract Clauses**836.513 Accident prevention.**

The contracting officer shall insert the clause at 852.236-87, Accident Prevention, in all solicitations that contain the clause at FAR 52.236-13, Accident prevention, or its Alternate.

[58 FR 48974, Sept. 21, 1993; 58 FR 58730, Nov. 3, 1993]

Subpart 836.6—Architect-Engineer Services**836.602 Selection of firms for architect-engineer contracts.****836.602-1 Selection criteria.**

In addition to the evaluation criteria set forth in FAR 36.602-1, the board will consider the factors set forth in this section as they apply to the project or purpose of the selection. Values will be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the preselection process. The values may be confirmed or adjustments may be made as a result of the discussions.

(a) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.

(b) Record of significant claims against the client because of improper or incomplete architectural and engineering services.

(c) Specific experience and qualifications of personnel proposed for assignment to the project, and record of working together as a team.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

836.602-2 Evaluation boards.

Central Office architect-engineer contractors will be selected by the board appointed by the Chief Facilities Management Officer, Office of Facilities Management. Field facility architect-engineer contractors will be selected by the board appointed by the facility director.

(a) The evaluation board will be chaired by the Director of the Architect-Engineer Evaluation Staff, or the Area Project Manager (or Deputy Area Project Manager) will be designated to

act when necessary. The board's members as appointed by the Chief Facilities Management Officer, Office of Facilities Management will include the appropriate Area Project Manager and as many qualified professional architects or engineers from the Office of Facilities Management technical services as may be considered appropriate for the particular project. Additional members from the Office of Facilities Management or from other VA administrations and staff offices will be designated for projects when appropriate.

(b) The evaluation board for a VA field facility will consist of no less than two members, one of whom will be the Chief, Acquisition and Materiel Management Service, and the other the Chief, Engineering Service, or their alternates. Where a facility has two or more engineers on its staff, an additional engineer will be appointed to the board. The chairperson of the board will be the senior engineer.

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988; 54 FR 40065, Sept. 29, 1989; 61 FR 11587, Mar. 21, 1996]

836.602-4 Selection authority.

The Chief Facilities Management Officer, Office of Facilities Management (for Central Office contracts) and the facility director (for field facility contracts), or persons acting in those capacities, are designated as the approving officials for the recommendations of the evaluation boards.

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988; 61 FR 11587, Mar. 21, 1996]

836.602-5 Procedure for procurements estimated not to exceed the Simplified Acquisition Threshold.

Either of the procedures provided in FAR 36.602-5 may be used when authorized by the Chief Facilities Management Officer, Office of Facilities Management.

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988; 61 FR 11587, Mar. 21, 1996]

836.606-70 General.

To assure that the fee limitation is not violated, the contracting officer will maintain suitable records to be

able to isolate the amount in the total fee to which the 6-percent limitation applies.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

836.606-71 Architect-engineer's proposal.

The use of VA Form 08-6298, Architect-Engineer Fee Proposal, is mandatory for obtaining the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for design services when the contract price is estimated to be \$50,000 or over. In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, VA Form 08-6298 shall also be used but supplemented or modified as needed for the particular project type.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

836.606-72 Contract price.

Where negotiations with the top-rated firm are unsuccessful, the contracting officer will terminate the negotiations and undertake negotiations with the firm next in order of preference after authorization by the Chief Facilities Management Officer, Office of Facilities Management or the facility director. Recommendation for award of the contract at the negotiated fee, will be submitted with a copy of the negotiation memorandum prepared in accordance with FAR 15.808 and, whenever a field pricing report has been received, to the Chief Facilities Management Officer, Office of Facilities Management, or the facility director, as appropriate.

[52 FR 282, Jan. 5, 1987, as amended at 54 FR 40065, Sept. 29, 1989; 61 FR 11587, Mar. 21, 1996]

836.606-73 Application of 6-percent architect-engineer fee limitation.

(a) The 6-percent fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to:

(i) Determination of program requirements including schematic or preliminary plans and estimates.

(ii) Determination of feasibility of proposed project.

(iii) Preparation of measured drawings of existing facility.

(iv) Subsurface investigation.

(v) Structural, electrical, and mechanical investigation of existing facility.

(vi) Surveys: Topographic, boundary, utilities, etc.

(2) Special consultant services not normally available in organizations of architects or engineers not specifically applied to the actual preparation of working drawings or specifications of the project for which the services are required.

(3) Other:

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media.

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications.

(iii) Supervision or inspection of construction, review of shop drawings or samples and other services performed during the construction phase.

(iv) All other services that are not integrally a part of the production and delivery of plans, designs, and specifications.

(4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

(b) The total cost of the architect or engineer services contracted for may not exceed 6 percent of the estimated cost of the construction project plus the estimated cost of related services and activities such as those shown in paragraph (a) of this section. To support project submissions, VA Form 10-1193, Application for Health Care Facility Project, and VA Form 10-6238, EMIS Construction Program-Estimate Worksheet, will be used and the proposed technical services shown where necessary and applicable.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

Department of Veterans Affairs

837.270

PART 837—SERVICE CONTRACTING

Subpart 837.1—Service Contracting— General

Sec.

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837.203 Types of consulting services.

837.270 Special controls for letters of agreement.

837.271 Management and professional services.

837.271-1 Scope.

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Subpart 837.3—Dismantling, Demolition, or Removal of Improvements

837.300 Scope of subpart.

Subpart 837.70—Mortuary Services

837.7001 General.

837.7002 List of qualified funeral directors.

837.7003 Funeral authorization.

837.7004 Administrative necessity.

837.7005 Unclaimed remains—all other cases.

AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12620, Mar. 29, 1984, unless otherwise noted.

Subpart 837.1—Service Contracts—General

837.103 Contracting officer responsibility.

When the contracting officer determines that legal assistance is necessary in determining whether a proposed service contract is for personal or nonpersonal services, he/she shall gather all the pertinent facts and request the opinion of District Counsel responsible for servicing the VA facility involved.

837.104 Personal services contracts.

(a) Personal service contracts having an employer-employee relationship shall not be awarded but will be consummated in accordance with VA Manual MP-5, Parts I and II.

(b) In addition to the elements used in assessing whether or not a contract is personal in nature identified in FAR 37.104(d), the following circumstances may also indicate a possible personal service contract.

(1) The contract does not call for an end product which is adequately described in the contract.

(2) The contract price or fee is based on the time actually worked rather than the results to be accomplished.

(3) Office space, equipment and supplies for contract performance are to be furnished by the Department of Veterans Affairs.

(4) Contractor personnel are to be used interchangeably with Department of Veterans Affairs personnel to perform the same function.

(5) The Department of Veterans Affairs retains the right to control and direct the means and methods by which contractor personnel accomplish the work.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 61 FR 20493, May 7, 1996]

Subpart 837.2—Consulting Services

837.203 Types of consulting services.

For the purpose of this subpart the definition of consulting services shall, in addition to examples listed in FAR 37.203, include peer review of research proposals.

837.270 Special controls for letters of agreement.

(a) Letters of agreement may be used to procure consulting services and advisory board memberships only by those individuals designated in 801.670-14(a) and individuals delegated authority under the conditions specified in paragraph (b) of that section, and will be limited to a value of \$500 per letter and to an accumulated annual total of \$2,500 to any individual or firm. Letters of agreement should only be used where normal procurement channels are not feasible and only for obtaining the following services:

(1) Consultant services including peer review of research proposals and advisory board memberships.

(2) Management and professional services (837.271)

(3) Instructors and training obtained pursuant to section 4122 of Title 38, United States Code.

(b) The delegated official will perform or have performed for each letter of agreement all those duties and requirements prescribed in this subpart, as modified by paragraphs (c) and (d) of this section. That official will also insure that all reporting requirements are completed for each action.

(c) The administration head or staff office director will be the highest level approving official for each procurement action which does not exceed \$500 in consulting fees (excluding travel, per diem and other travel-related costs) and which does not award more than an accumulated total of \$2,500 per year in consulting fees to any individual or firm. (Consulting services anticipated to exceed these dollar limitations will not be obtained through letters of agreement.)

(d) In lieu of the requirements outlined in appendix A of this subpart 837.2, justifications for letters of agreement will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services. The justification will also certify that the procurement action will not violate post-employment restrictions prescribed in the Ethics in Government Act and 803.101-3.

(e) All procurements for consulting services accomplished through letters of agreement will be entered into the agency consolidated listing of consultant contracts in the format prescribed by 837.205(d). All such log entries applicable to Central Office activities shall be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93). The office shall also be responsible for entering such information pertaining to Central Office letters of agreement into the Federal Procurement Data System.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

837.271 Management and professional services.

837.271-1 Scope.

(a) The controls in this section are applicable to management and professional services, special studies and analyses and management and support services for research and development. Specific types of services to be controlled are listed in appendix B of this subpart. Management and support services for research and development are the same services listed in appendix B when procured with Research and Development funds. However, the controls do not apply to the conduct of research and development.

(b) Services in other than the categories listed in appendix B are also controlled if covered by the definition in 837.271-2 and either represent unusual, nonroutine requirements or requirements having significant impact on Department operations. Contracting officers will be responsible for making such determinations.

(c) This section does not apply to contracts for the medical, dental and ancillary care of beneficiaries or to contracts for the provision of other services directly to beneficiaries, such as educational services.

[49 FR 12620, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989]

837.271-2 Definition.

The term *management and professional services* means those services related to the performance of operating functions of an agency, involving knowledge of an advanced type, and requiring the use of discretion and judgment. Management and professional services differ from consulting services in that the latter term refers to services of a purely advisory nature. Both categories of services involve selection of the contractor on the basis of qualifications, rather than price alone, and are therefore normally procured by negotiation.

837.271-3 Guidelines for use of contracts for management and professional services.

(a) Contracts are appropriate when:

(1) Unusual or peak workloads occur that cannot be accomplished by Government personnel.

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(2) Work involved is of an intermittent, occasional, or one-time nature for which the hiring of Government personnel is not feasible.

(3) They result in a more economical method of performing the work (see OMB Circular No. A-76, revised.)

(b) Contracts are inappropriate (improper or illegal) when:

(1) The service involves exercising a Governmental judgment; i.e., managing programs requiring value judgments; selection of priorities; direction of Federal employees; and all regulatory responsibilities.

(2) An employer-employee relationship would be established or involved.

(3) They circumvent personnel salary or ceiling limitations.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

837.271-4 Approval for use of contractual services.

(a) All contracts controlled by this section require the approval of the Secretary except as provided in paragraph (b) of this section. The procedure to be used in obtaining approval is the same as that required for consulting service as prescribed in 837.205(c). The format and content of the supporting justification will be the same as that in appendix A of this subpart.

(b) Contracts not exceeding \$500 may be approved by the heads of facilities, without higher level review, for requirements emanating at the local level. In Central Office, contracts not exceeding \$500 may be approved at one level above the requesting activity, without higher level review. Supporting justifications will be the same as required in paragraph (a) of this section.

(c) The approvals of officials designated in paragraphs (a) and (b) of this section are in addition to and do not replace the technical and legal reviews of contract documents prior to award prescribed elsewhere in these regulations.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

Subpart 837.3—Dismantling, Demolition, or Removal of Improvements

837.300 Scope of subpart.

Contracting officers should be cognizant of the requirements contained in VA Manual MP-3, Part II, Chapter 6, for approval necessary prior to entering into a contract for disposal of VA real property. Such approval(s) shall be included in the contract file.

Subpart 837.70—Mortuary Services

837.7001 General.

This subpart establishes the policies and procedures governing the procurement of funeral and burial services for deceased beneficiaries of the Department of Veterans Affairs, as provided in 38 U.S.C. 903.

837.7002 List of qualified funeral directors.

Contracting officers will establish, in coordination with cognizant Medical Administration Service personnel, a list of funeral directors capable of performing the burial services specified in 837.7003. The contracting officer will attempt to establish a commitment to perform these services within the statutory limitation of \$300. Each funeral director must be fully licensed in the jurisdiction in which the business operates. If there has been no prior experience with the funeral director which would ensure the adequacy of the funeral director's services and casket, arrangements will be made prior to contract negotiation to inspect the premises and the casket to be provided, and to check with the local business bureau and/or Chamber of Commerce.

[49 FR 12620, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

837.7003 Funeral authorization.

(a) When a veteran dies while receiving care in a Department of Veterans Affairs health care facility or in a non-

Department of Veterans Affairs institution at Department of Veterans Affairs expense, and the decedent's remains are unclaimed, the Chief, Medical Administration Service, will forward to the Chief, Supply Service, a properly executed VA Form 10-2065, Funeral Arrangements, requesting that funeral and burial services for the deceased be procured. Burial will be made in the nearest National Cemetery having available grave space.

(b) The contracting officer will enter into negotiations with local funeral directors to procure a complete funeral and burial service within the statutory allowance of \$300. This service will consist of and will be specified on the purchase order, VA Form 90-2138, Order for Supplies or Services, as follows:

(1) Preparation of the body, embalming.

(2) Clothing.

(3) Casket. (The casket, as a minimum, will be constructed from thick, strong particle board and must be of sufficient strength to support the weight of an adult human body. Cardboard or press paper or similar materials are not acceptable).

(4) Securing all necessary permits.

(5) Ensuring that a United States Flag (provided the funeral director in accordance with Veterans Health Services and Research Administration Manual M-1, Part I, paragraph 14.40) accompanies the casket to place of burial.

(c) An additional allowance for transportation of the body to the place of burial is provided in 38 U.S.C. 903(a)(2). This allowance will cover the transportation cost of shipment of the body by common carrier or by hearse from the VA facility to the funeral home and to the place of burial, any charges for an outside (shipment) box, and the charges for securing all necessary permits for removal or shipment of the body. These costs are not chargeable against the \$300 allowance.

(d) In accordance with Veterans Health Services and Research Administration Manual M-1, Part I, paragraph 14.37, the contracting officer will designate the Chief, Medical Administration Service, or representative, to be responsible for the medical inspection of the mortuary services performed and

inspection of the merchandise furnished. This designee will also be responsible for certifying receipt on the receiving report.

(e) The Chief, Supply Services, will assist the Chief, Medical Administration Service, in developing the local procedures specified in Veterans Health Services and Research Administration Manual M-1, Part I, paragraph 14.37c.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

837.7004 Administrative necessity.

(a) When persons die under Department of Veterans Affairs care who are not legally entitled to such care at Department of Veterans Affairs expense, and no relatives or friends will claim the remains, and the municipal, county or State officials refuse to provide for final disposition, arrangements will be made and expenses assumed for burial locally under separate contractual agreement.

(b) When a full and complete funeral and burial service as prescribed in 837.7003 cannot be obtained by the contracting officer within the statutory allowance, he/she will, prior to taking any further action, secure from the facility director a written determination that the disposition of the remains must be accomplished by the Department of Veterans Affairs as an administrative necessity. The facility director will also authorize in writing the expenditure of such additional funds as may be necessary for this purpose. The amount of these additional funds will be held to the minimum, keeping in mind, however, that the deceased must be given a proper and fitting interment.

(c) The determination and authorization by the facility director will be made a part of the contract file.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 40065, Sept. 29, 1989]

837.7005 Unclaimed remains—all other cases.

Requests for information on the disposition of the unclaimed remains of a veteran whose death occurs while not under the direct care or treatment of the Department of Veterans Affairs

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will be referred to the Veterans Services Officer for processing in accordance with Veterans Benefits Administration Manual M27-1, Part II. This manual is available at any Department

of Veterans Affairs regional office, medical center or VA office.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 842—CONTRACT ADMINISTRATION

Sec.

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842.1203 Processing agreements.

AUTHORITY: 38 U.S.C. 210 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12624, Mar. 29, 1984, unless otherwise noted.

842.000 Scope of part.

This part applies to all contracts, whether sealed bid or negotiated. (See 801.602-70 for requirements for legal review of certain contract administration actions.)

[49 FR 12624, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 51 FR 23072, June 25, 1986; 52 FR 28559, July 31, 1987]

842.070 Definition.

Contract Administration is the coordination of actions required for the performance of a contract including the guidance and supervision necessary to assure that all contractual obligations are fulfilled.

Subpart 842.1—Interagency Contract Administration and Audit Services

842.101 Policy.

(a) Pursuant to FAR policy encouraging interagency cross-servicing in field contract support services, contracting officers of the Department of Veterans Affairs will utilize the support services of other agencies to the extent feasible. Examples of such services are: preaward surveys; quality assurance and technical inspection of contract items; and review of contractors' procurement systems. Requirements for support services available from any other Government department or agency will be obtained on the basis of an approved negotiated interagency support agreement.

(b) An interagency support agreement is a written instrument of understanding executed between the parties to the agreement. The agreement should state clearly the accord which has been reached between the two parties involved, especially the obligations assumed by the rights granted each. The agreement will be specific with respect to resources to be provided by both the supplying and receiving activities. It will also provide for funding and reimbursement arrangements, and clauses permitting revisions, modifications thereto, or cancellation thereof, will be included.

842.102 Procedures.

(a) The Department of Defense Directory of Contract Administration Services Components and the Directory of Federal Contract Audit Offices are available through the Department of Veterans Affairs Forms and Publications Depot.

(b) Proposed interagency support agreements with any other Government department or agency involving the expenditures of Department of Veterans Affairs funds of \$5,000 or more will be forwarded by the facility director (or Central Office official) to the Deputy Assistant Secretary for Acquisition and Materiel Management (91),